Supreme Court, U.S.
FILED
APR 16 1986
JOSEPH F. SPANIOL, JR.
CLERK

(8)

No. 85-1582

In the Supreme Court of the United States

October Term, 1985

IDA JANE GROSS,
Petitioner,

vs.

THOMAS R. GROSS,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

GEORGE W. GROSS
Counsel of Record
8 East Broad Street
Suite 601
Columbus, Ohio 43215
(614) 221-7831
Counsel for Respondent

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

10pp

TABLE OF CONTENTS

TABLE OF AUTHORITIES II

JURISDICTION 1

CONSTITUTIONAL PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 2

SUMMARY OF ARGUMENT 3

ARGUMENT:

I. Neither the Constitution nor laws of the United States vests in petitioner any right to have her suit reviewed on Writ of Certiorari 4

I-A. A Federal District Court lacks subject matter jurisdiction to review a decision of the Ohio Supreme Court 5

I-B. This action is barred by the doctrine of res judicata 6

CONCLUSION 7

CERTIFICATE OF SERVICE 7

TABLE OF AUTHORITIES

Cases

Allen v. McCurry, 449 U.S. 90, 103-04 (1980) 6
Beck v. Washington, 369 U.S. 541, 554-55 (1962 5
District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482-86 (1983) 5
Federated Department Stores v. Moitie, 452 U.S. 394, 398 (1981) 6
Gryger v. Burke, 334 U.S. 729, 731 (1948) 5
Layne & Bowler Corp. v. Western Wells Works, Inc., 261 U.S. 387, 393 (1923) 4
Migra v. Warren City School District Board of Education, ... U.S. ....., 104 S. Ct. 892, 894 (1984) 6
Rice v. Sioux City Memorial Park Cemetery, Inc., 349 U.S. 70 (1955) 3, 4

Other Authorities

Rule 17.1(b), (c), United States Supreme Court Rules 1
Supreme Court Rule 17 4
28 U.S.C. Section 1257 6
28 U.S.C. Section 2101(c) 1
42 U.S.C. Section 1983 6

Constitutional Citations

Fifth Amendment, United States Constitution 1, 3
Fourteenth Amendment, United States Constitution 1, 2, 3

No. 85-1582

In the Supreme Court of the United States

October Term, 1985

IDA JANE GROSS,
Petitioner,

vs.

THOMAS R. GROSS,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

JURISDICTION

The Ohio Supreme Court's *sua sponte* refusal to grant jurisdiction over Petitioner's appeal was entered herein on December 11, 1985, and this petition for a Writ of Certiorari was filed within ninety (90) days following entry of that judgment. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 2101(c) and Rule 17.1(b), (c), United States Supreme Court Rules.

CONSTITUTIONAL PROVISIONS INVOLVED

A. Fifth Amendment of the United States Constitution: "No person shall be . . . deprived of life, liberty, or property, without due process of law. . . ."

B. Fourteenth Amendment to the United States Constitution: ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law. . ."

C. Fourteenth Amendment to the United States Constitution: "No State shall . . . deny any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

The operative facts of this case are not in dispute. Respondent, Thomas R. Gross, and Petitioner, Ida Jane Gross, were married on September 17, 1968. This being the second marriage for both, it was deemed appropriate to execute an antenuptial agreement.

In 1981, the Petitioner-Wife filed for a divorce, and in that year, a divorce was granted to her on the grounds of gross neglect of duty, and inter alia, the Court approved the antenuptial agreement previously entered into by the parties.

From that decision, an appeal was taken to the Court of Appeals, Tenth Judicial District, Franklin County, Ohio, where, in a two-to-one decision, the Court of Appeals reversed the trial court, as it pertained to the validity of the antenuptial agreement. That opinion was rendered in Case No. 82AP-741, on February 10, 1983.

An appeal was then taken to the Supreme Court of Ohio in Case No. 83-564, wherein the Court of Appeals was reversed and the antenuptial agreement was validated, however, the case was remanded to the trial court for a review and modification of the alimony order.

This mandate was carried out by the trial court, and an appeal was once again taken to the Court of Appeals which was denied. An appeal was taken by the Petitioner-Wife to the Supreme Court of Ohio who refused to rehear the matter.

SUMMARY OF ARGUMENT

1. Neither the Constitution nor laws of the United States grants Petitioner a right to review on a Writ of Certiorari. This Court traditionally has demanded a demonstration of the existence of unresolved federal questions of sufficient scope and impact to justify an exercise of its discretionary jurisdiction. *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70 (1955).

Petitioner's suit, which seeks nothing more than federal court review of a state court interpretation of state law, is bereft of federal issues. Even if federal issues were present this action is so unusual and episodic in nature that review by this Court would not result in resolution of important questions of federal law.

2. In seeking reversal, Petitioner invites this Court to depart from prior interpretations of the Fifth and Fourteenth Amendments of the United States Constitution.

Petitioner attempts to relitigate issues which she raised or could have raised in the courts below. Therefore, this action is also barred by the doctrine of res judicata.

ARGUMENT

I

Neither the Constitution nor Laws of the United States Vests in Petitioner Any Right to Have Her Suit Reviewed on Writ of Certiorari.

Whether to grant review on a Writ of Certiorari is solely within the discretion of this Court. Sup. Ct. R. 17. Before a Writ of Certiorari will issue, Petitioner must demonstrate to the satisfaction of this Court that her case presents "special and important reasons" deserving attention. Id. These reasons go "beyond the . . . episodic." *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 74 (1955). They must involve "principles the settlement of which is of importance to the public, as distinguished from that of the parties," or must arise in the context of a "real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals," *Layne & Bowler Corp. v. Western Wells Works, Inc.*, 261 U.S. 387, 393 (1923) (quoted in *Rice*, 349 U.S. at 79), or between state courts of last resort. Sup. Ct. R. 17.

Viewing this test from the perspective of the instant controversy, Petitioner could not find herself on shakier ground. First, the test for issuance of a Writ of Certiorari presupposes issues of federal concern.

Petitioner alleges no violation of any specific federal constitutional rights other than in the most conclusitory terms, to-wit, her unhappiness with the manner in which the Ohio courts resolved the question of the validity of an antenuptial agreement.

Even assuming, arguendo, that a misapplication of state law occurred during Petitioner's protracted journey

through the Ohio court system, the Equal Protection Clause and the right of non-deprivation of "life, liberty and property" does not guarantee freedom from judicial error. *Beck v. Washington*, 369 U.S. 541, 554-55 (1962). Nor may a federal court substitute its own judgment, on an allegedly erroneous interpretation of state law by a state court, and then treat its determination that error occurred as conclusively demonstrating there was a violation of the Due Process Clause in the state court proceeding. *Gryger v. Burke*, 334 U.S. 729, 731 (1948).

Petitioner cannot identify any benefit which will flow to the public as a result of continued litigation in this matter. The idiosyncratic nature of this case will make any decision on the merits rendered by this Court capable of producing no consequences for future litigants.

Petitioner can hardly argue that any juristic conflict will be resolved should her request for review be granted. In short, Petitioner's case satisfies none of the criteria established for distinguishing meritorious from meritless petitions for Writs of Certiorari.

I

A. A Federal District Court Lacks Subject Matter Jurisdiction to Review a Decision of the Ohio Supreme Court.

From its inception, Petitioner has attempted to attack collaterally finality of a state court proceeding. It is well established that it is without jurisdiction to review, much less reverse or modify, judicial determination of the state's highest court. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482-86 (1983). This applies in spite of allegations that "the state court's action was un-

constitutional." Id. Review see also 28 U.S.C. Section 1257, and Petitioner has already exhausted her opportunity to present her arguments regarding the lower court's handling of the case. Petitioner's invention of specious federal issues cannot resuscitate long-resolved questions of law. She is not entitled to a federal review of state court action because she is disappointed by the Ohio court's response to her plea.

I

B. This Action Is Barred by the Doctrine of Res Judicata.

According to the doctrine of res judicata, a litigant is barred from "relitigating issues that were or could have been raised" in an earlier case. *Federated Department Stores v. Moitie,* 452 U.S. 394, 398 (1981); see also *Migra v. Warren City School District Board of Education,* ..... U.S. ....., 104 S. Ct. 892, 894 (1984). Res judicata applies in federal court to bar relitigation of matters adjudicated in state court, and the doctrine is fully applicable even to actions under 42 U.S.C. Section 1983. *Allen v. McCurry,* 449 U.S. 90, 103-04 (1980).

CONCLUSION

For the above reasons, the petition for a Writ of Certiorari should be denied.

Respectfully submitted,

GEORGE W. GROSS
Counsel of Record
8 East Broad Street
Suite 601
Columbus, Ohio 43215
(614) 221-7831
Counsel for Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Respondent's Answer Brief was served upon C. William Brownfield and William H. Arnold, 140 East Town Street, Columbus, Ohio 43215, counsel for Appellant, by regular United States mail, postage prepaid, this 14th day of April, 1986.

GEORGE W. GROSS
Counsel of Record